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In the
Supreme Court of the United States

OCTOBER TERM 1999

JAMES SPANGLER, DONALD MELCHER, WAYNE J. BIELEFELDT, ET AL.,

Petitioners,

v.

ALTEC INTERNATIONAL LIMITED PARTNERSHIP, CHART INDUSTRIES, INC. and ALTEC INTERNATIONAL LIMITED PARTNERSHIP PENSION PLAN AND TRUST FOR HOURLY EMPLOYEES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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INTRODUCTION

Respondents, in their Brief in Opposition to Petitioners' Writ of Certiorari, have raised several points, which are new and inaccurate misstatements of fact and law. These points will be addressed individually in the following sections of this Reply Brief.

I. RESPONDENTS STATEMENT OF "QUESTION PRESENTED FOR REVIEW" INACCURATELY MISSTATES THE ISSUES PRESENTED.

Respondents, in their Brief in Opposition, assert that the question for review is whether the statute of limitations for a breach of a fiduciary duty begins to run when a Plaintiff "detrimentally relies" on the misrepresentations made. However, this question, as posed, misses the point. In this case, there was no detriment to any Petitioner until Altec failed to perform in accordance with the representations made. Thus, no detriment occurred until there was this failure to perform, which did not occur before 1994. When Petitioners joined Altec in 1985 and 1986, they fully expected Altec to abide by the previous promises and representations made. Petitioners had absolutely no reason to believe Altec would not abide by its promises. Thus, Altec's formulation of the "Question Propounded For Review" misstates the issues herein.

II. RESPONDENTS' BRIEF RAISES NEW FACTS, NOT OF RECORD.

On page 5 of Respondents' Brief in Opposition, Respondent asserts as follows:

> The Employees' pension claims in this action are based upon the fact that, *after the Employees left their employment with Trane*, Trane increased its pension multiplier. (Emphasis in the original.)

This fact is a new fact, and, indeed, is not supported by the record. It is not part of Petitioners' assertion and is not a basis for Petitioners' claims.

Petitioners assert that Altec courted Petitioners while Petitioners were still employees with Trane Company. The purpose of this courtship by Altec was to induce experienced and skilled Trane employees to join Altec. In this courtship, Altec made numerous representations to the Petitioners that Petitioners' pension benefits (if they joined Altec) would be the same as if they had stayed with Trane. In other words, not only would the Trane Company employees who joined Altec receive credit for their years of service with Trane Company, but in addition, the ultimate pension benefits provided would be the same for Petitioners as if Petitioners had stayed with Trane. These facts of record are at the core of Petitioners' contentions in this action.

The fact is, there were representations made by Altec officials to Petitioners that induced Petitioners to join

Altec. These representations became the basis of a fiduciary duty by Altec to abide by the promises made. It was not until 1994 that Petitioners began to learn that Altec was not going to abide by the promises made 8 to 9 years earlier. It was not until 1994 that Petitioners first learned or gained any knowledge, whatsoever, that Altec would not live up to the previous promises made which had formed the heart of its fiduciary duties to Petitioners.

From this, it is clear that Petitioners' claims are not "based upon the fact that, after the Employees left their employment with Trane, Trane increased its pension multiplier." Altec's misstatement of Petitioners' claims is not supported by the record.

III. RESPONDENTS MISSTATE AND MISCHARACTERIZE THE NATURE, EXTENT, AND SIGNIFICANCE OF DOCUMENTS GIVEN TO PETITIONERS.

On page 6 of Respondents' Brief in Opposition, Respondents assert that

> "Employees were given numerous documents that detailed the exact scope of ALTEC's benefits program. The documents made clear that only years worked for ALTEC would be used in calculating pension benefits."

Altec, did, in 1986, distribute documents to all employees that showed Altec employee benefit calculations; nevertheless, these documents, did not indicate that the

benefit calculations and information in the documents applied to the former Trane employees. These documents described the benefits for regular Altec employees and did not apply to Petitioners, a special category of employees who had been promised extra retirement benefits equal to the benefits they would have received had they remained at Trane. Petitioners knew, because they had been told by Altec, that Altec would go ahead with its purchase of Trane's Brazed Aluminum Products Division only if the Petitioners agreed to leave Trane and join Altec to develop and train its workforce. Based upon the representations made by Altec, Petitioners had no reason to believe that the pension calculations in the documents served any purpose other than as a comparison between what non-former Trane employees would receive versus what the Trane employees would receive from Altec. Nothing in these documents therefore gave the Petitioners any reason to believe that their benefits would be anything other than as had been represented by the Altec officials in 1985 and 1986.

Because of what the Petitioners were told, they reasonably believed the written documents did not apply to them, a special group being persuaded to join Altec. Since the Petitioners constituted this special group, there was not a conflict between what they were promised and the written plan covering employees who were not part of that special group. The documents given simply did not apply to Petitioners. Respondents' discussion in their Brief, therefore, misstates the nature and significance of the documents provided.

IV. THE PRINCIPAL CASES RELIED UPON BY RESPONDENTS ARE READILY DISTINGUISHABLE.

In support of Respondents' argument that Petitioners' causes of action arose in 1988 and are time-barred, Respondents rely upon several cases. However, Respondents' broad-brush analysis of these cases mischaracterizes their holdings insofar as they relate to the present case. Among the cases cited by Respondents, *Librizzi v. The Children's Memorial Medical Center*, 134 F.3d 1302 (7th Cir. 1998).

In *Librizzi*, the Plaintiff contended that the Defendant employer failed to give accurate advice about Plaintiff's eligibility for benefits. It was alleged this poor advice led Plaintiff to make poor choices concerning his retirement options. The alleged actionable statements made by the Defendants were in July of 1990. The Plaintiff, in 1991, chose early retirement based upon the statements made; he began receiving benefits in February of 1991. Plaintiff then asked his employer, in October of 1991, to change his retirement package. Suit was not commenced until April of 1996. See, *Librizzi*, 134 F.3d at 1305.

The Seventh Circuit correctly reasoned that the only logical conclusion was that in October of 1991 when the Plaintiff sought to change the retirement package, he was aware of the allegedly incorrect nature of the advice he had previously been given. This knowledge was the logical basis for the October 1991 request.

Therefore, based upon a straightforward application of the statute of limitation (*i.e.* ERISA Section 413(a), 29 U.S.C. §1113), the Court determined the statute had run. The damage was done and the Plaintiff "had actual knowledge of the breach or violation" of the duty in 1991, and suit was commenced in 1996, more than three years after Plaintiff had actual knowledge of the breach. See *Id.*

However, the instant case presents a far different circumstance than the Court faced in *Librizzi*. In contrast to the facts in *Librizzi*, while the representations and promises in this case made in 1985 and 1986 formed the fiduciary duties that Altec ultimately breached in 1994, the breach occurred only when there was an actual failure to perform the duties in 1994, and there are clear issues of fact whether Altec effectively notified the Petitioners of its intent to pay the lesser benefits prior to October 1994, when the Petitioners first began to retire. *Librizzi* does not address such circumstances and thus does not apply.

Another case relied upon by the Respondents is *Larson v. Northrop Corp.*, 21 F.3d 1164 (D.C.Cir. 1994). *Larson* is also inapplicable. In *Larson*, the Plaintiff-Appellant was employed by the Fuller Company continuously from 1959 until 1985. From 1971 until 1981, the Fuller Company was a subsidiary of the Defendant, Northrop Corporation. When Northrop purchased the Fuller Company in 1971, it terminated the existing employee's retirement plan and replaced it with a new employee benefit plan. See *Larson*, 21 F.3d at 1165.

In 1981, Defendant Northrop terminated the plan and purchased a group annuity contract from Principal

Mutual Life Insurance Company to fund the pension plan and the Defendants' liabilities thereunder. More than six years after Northrop terminated the existing pension plan and substituted it with a group annuity contract from Principal, the Plaintiff brought his action. The Plaintiff contended that the Defendant Northrop violated its ERISA fiduciary duties. See *Larson*, 21 F.3d at 1166. In essence, the *Larson* plaintiffs contended that defendants violated their fiduciary duty in changing the plans and that in the course of changing the plans, the benefits to be received by the participants were reduced (thereby causing damage to the plaintiffs at that time).

This is different from what this Court is presented with in this case. Here, Petitioners contend that Altec breached its fiduciary duty simply by not paying, when due, the benefits promised, and that until payment was due (when Petitioners began to retire) the Petitioners did not realize their retirement benefits were less than had been promised. The promises made in 1985 and 1986 formed the basis of the agreement that Petitioners understood to be in existence between Altec and the Petitioners. No steps were taken at that time to implement the agreement (unlike in *Larson*, where a group annuity was purchased), nor were any steps necessary at that time. Under these circumstances, for all the reasons previously argued, there could be no breach until Altec actually failed to abide by its promises or, at least, took affirmative steps, with Petitioners knowledge, not to abide by its promises. In *Larson*, the Defendants knowingly and publicly changed their obligations and duties and knowingly and publicly changed the rights of the employee plan participants, to their

detriment, when defendants changed plans in December of 1981.

> Northrop's purported breach of fiduciary duties under 29 U.S.C. § 1104(a) occurred on December 21, 1981, when Northrop purchased the allegedly deficient group annuity contract from Principal in substitution for the plan it had terminated.

See *Larson*, 21 F.3d at 1171.

In the present case, Petitioners do not contend that Altec, by specific acts in 1985 and 1986, amended the employee retirement plan. Petitioners contend that at that time, Altec made specific promises as to what the nature and extent of these Petitioners' (as a special group) benefits would be under that plan. Unlike *Larson*, where an annuity was purchased, no further steps relating to Altec's representations and promises were taken by Altec until 1994. When, in 1994, Altec failed to perform in accordance with its earlier promises, it then breached its fiduciary duties. Under these facts, Petitioners did not know their benefits would be less than promised until 1994. Thus, *Larson* presents materially different circumstances and is inapplicable.

V. RESPONDENTS IGNORE AND MISSTATE THE APPLICABILITY OF *VARITY V. HOWE*, 516 U.S. 489 (1996) TO THE PRESENT CASE.

A review of Respondents' Brief in Opposition reveals that they have totally failed to address the critical language from *Varity v. Howe*, 516 U.S. 489 (1996), which was quoted by Petitioners in their Petition for Writ of Certiorari, by which this court indicates that it is the employer's failure to pay the benefits in question that constitutes the breach of the fiduciary duty. In *Varity* this court specifically characterized "a denial of benefits as a breach of fiduciary duty." 516 U.S. at 514.

If Respondents' interpretation of *Varity* is to be given credence, a strong argument in favor of certiorari is presented, because Respondents' interpretation and the above-quoted *Varity* language are inconsistent so that clarification by this court is required. The question of how 29 U.S.C. §1113(1)(A) applies to a *Varity*- type breach of fiduciary duty case is a significant issue that should be addressed and clarified by the Supreme Court.

CONCLUSION

For the reasons set forth in Petitioners' Petition for Writ of Certiorari, together with the arguments presented within this Reply Brief, Petitioners respectfully request that their Petition for Writ of Certiorari be granted.

Respectfully submitted,

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